

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA

CR 1:11-340

Hon. ROBERT HOLMES BELL

V.

JOHN MARCINKEWCIZ, II., and
SHELLEY R. WALDRON.

//

**DEFENDANTS' MOTION TO DISMISS INDICTMENT AND OR ALTERNATIVELY,
MOTION TO ALLOW ASSERTION AT TRIAL OF THE MICHIGAN MEDICAL
MARIHUANA ACT AS AN AFFIRMATIVE DEFENSE**

NOW COME Defendants Marcinkewciz II, and Waldron, through undersigned counsel and move this Honorable Court to enter an Order dismissing the Indictment in this case, or alternatively, if the Court denies that relief, an Order allowing assertion at trial of this cause of the Michigan Medical Marihuana Act as an affirmative defense to the charges contained in the Indictment. As grounds for these Motions Defendants state the following:

1. The Defendants are charged in Count One of the Indictment with Conspiracy to Manufacture Marijuana in violation of Title 21, USC, Sections 846, 841 (a) (1) (B) (vii).
2. Count Two charges Defendants Marcinkewciz and Waldron with Manufacture of Marijuana, in violation of Title 21, USC, Sections 841 (a) (1) and 841 (b) (1) (vii).
3. Count Four sets forth a Forfeiture Allegation against both Defendants.
4. All Defendants herein were originally charged in state court, namely by the Prosecutor in and for Mecosta County, Michigan.

5. At the time of the charges being lodged in state court, both Defendants had lawful status under the Michigan Medical Marihuana Act, in the following particulars:
 - A. John Marcinkewicz was a lawfully registered patient and caregiver under the Act.
 - B. Shelley Waldron was a lawfully registered patient and caregiver under the Act.
6. At the time of the seizure of marijuana plants and the arrest of the Defendants herein and the charges being lodged in state court, the Defendants were in strict compliance with all of the provisions of the Michigan Medical Marijuana Act.
7. It was this fact, upon information and belief, which caused the Mecosta County Prosecutor to drop the state charges.
8. The United States Attorney's Office picked up the cause after the state charges were dropped, resulting in the Indictment herein.
9. The current federal prosecution of conduct clearly permissible and legal under the Michigan Medical Marihuana Act is a flagrant violation of the Defendants' due process rights under the Fifth Amendment, the Ninth Amendment, the Tenth Amendment and the Fourteenth Amendment to the United States Constitution.
10. The Indictment herein as it attempts to enforce the federal Controlled Substances Act (CSA), as to conduct which is lawful under applicable state law, is an impermissible overreaching of Congress's power to regulate interstate commerce.
11. The violation of the Defendants' due process rights requires the relief of dismissal of the Indictment.
12. Alternatively, if this Honorable Court does not grant the relief of dismissal, Defendants must be able to assert their lawful following of and participation in, the provisions of the Michigan Medical Marihuana Act (MMMA), at trial in this cause, because to deny same

is to effectively destroy Defendants' right to a fair trial in this matter. Without question, the Indictment contains a mens rea element, in that it charges the Defendants did,

“knowingly and intentionally combine, conspire,
confederate and agree with each other...”

to violate the CSA. (Indictment Counts One, Two and Three). The Defendants have an absolute right under the United States Constitution to present evidence in their defense as to each element of each charge brought by the Government.

13. The Defendants vehemently deny that they intentionally or knowingly violated the federal CSA, because they had a good faith belief, supported by the undisputed facts of this case, that they were acting 100% within the lawful provisions of the MMMA.
14. Without the ability to assert their compliance with and reliance upon, the MMMA, the Defendants' due process rights to defend this case and assert their innocence, will be totally destroyed.

WHEREFORE, for the reasons contained above herein, and in the accompanying Brief in Support, Defendants pray that this Court enter an Order granting the following relief:

- a. Dismissing the Indictment as to all Defendants.
- b. In the alternative, allowing the Defendants to assert the MMMA as an affirmative defense at trial of this cause.
- c. Any other relief which this Honorable Court deems fair and just.

Respectfully submitted,

s/Leon J. Weiss (P 35996)

Counsel for John Marcinkewicz, II.

s/ Jason P. Ronning (P 64779)

Counsel for Shelley Waldron